even though he has not been adjudged a bankrupt, may be required to turn over his separate estate for administration to the trustee in bankruptcy of the firm, when the partnership and individual estates together are not enough to pay partnership debts. *Francis* v. *McNeal,* (1913), 33 Sup. Ct. 701.

This case finally settles the controversy that has raged over the "entity theory of partnership" based on the vague wording of § 5 of the Bankruptcy Act of 1898. § 5a provides that "a partnership, during the continuance of the partnership business, or after its dissolution and before the final settlement thereof, may be adjudged a bankrupt." § 5h, provides that "in the event of one or more but not all of the members of a partnership being adjudged bankrupt, the partnership property shall not be administered in bankruptcy, unless by consent of the partner or partners not adjudged bankrupt; but such partner or partners not adjudged bankrupt shall settle the partnership business as expeditiously as its nature will permit, and account for the interest of the partner or partners adjudged bankrupt." To follow this statute literally, it would seem that Congress thereby conferred upon partnerships a distinct entity, and that they should be considered separate and apart from the individuals composing the partnership. And many of the earlier cases took this view. *Chemical National Bank* v. *Meyer,* 92 Fed. 896; *In re Stein,* 127 Fed. 547. The courts holding that this was the evident purpose of the act say that if, where one or more of the partners are adjudged bankrupt, those that are not so adjudged may administer the partnership property, *a fortiori* they should control their individual property, and the court cannot do so without their consent. *In re Bertenshaw,* 157 Fed. 363; *In re Junck & Balthazard,* 169 Fed. 481. However, other courts took exactly the contrary view and held that, even though the firm was a distinct entity, the trustee had power to compel the unadjudicated members to turn over their property to be applied as assets of the partnership. *In re Meyer,* 98 Fed. 976; *Dickas* v. *Barnes,* 140 Fed. 849. The principal case argues that it could not have been the intention of Congress to change one of the fundamental principles of partnership. The result of the court's reasoning is practically to explode the "entity" of partnerships as an effective principle of bankruptcy law. For a full discussion of the conflicting holdings in the lower courts see 10 MICH. L. REV. 215; 8 COL. L. REV. 599.

BIGAMY—WHAT CONSTITUTES A COMMON LAW MARRIAGE.—The defendant went through a marriage ceremony with X in New York. They then removed to Illinois and cohabited there for almost ten years. Eight years before this marriage the former husband of X obtained in California a divorce that was void by the law of New York, but valid by the law of Illinois. Defendant now marries K. *Held,* (by a divided court) that, although common-law marriages are recognized by the law of Illinois, defendant is not guilty of bigamy. *People* v. *Shan* (Ill. 1913) 102 N. E. 1030.

This case presents the question, Does a common-law marriage result where the parties in good faith for years have treated and held each other out as husband and wife after the removal of an impediment which rendered their marriage contract void? The principal case declares that a common law

marriage does not result and that the continued relation of the parties is pursuant to the void marriage contract. It would seem that this point has never previously arisen in a criminal case. On principle *Manning* v. *Spurck* 109 Ill. 447, 65 N. E. 342, is directly opposed to the principal case; there the parties joined in an invalid ceremonial marriage in Illinois and lived there until after the removal of the impediment. It was held that a common law marriage resulted after the removal of the impediment, although there was no new affirmative act by the parties. In accord with this case are: *DeThoren* v. *Atty. General,* 1 App. Cas. 686; *Eaton* v. *Eaton,* 66 Neb. 676, 1 Am. & Eng Ann. Cas. 109; *Teter* v. *Teter,* 88 Ind. 494; *Chamberlain* v. *Chamberlain,* 68 N. J. Eq. 414 and 736, 62 Atl. 680, 3 L. R. A. N. S. 244; *Rose* v. *Clark,* 8 Paige 574. It was held in *Travers* v. *Reinhardt,* 205 U. S. 423, that a marriage, invalid where contracted, did not prevent the forming of a common-law marriage in a state where such marriages were recognized although good faith could be credited to only one party. The defendants in *Bynon* v. *State,* 117 Ala. 80, and in *State* v. *Gonce,* 79 Mo. 600, were convicted of bigamy and the evidence of the first marriages was solely that of cohabitation and reputation. In accord with the principal case are *Collins* v. *Voorhees,* 47 N. J. Eq. 555, 14 L. R. A. 364, 24 Am. St. Rep. 412, and *Hunts Appeal,* 86 Pa. 294; and in the recent case of *Melton* v. *State* (Tex. Cr. App.) 158 S. W. 550 the court held that in order to constitute a valid common-law marriage sufficient to support a prosecution for bigamy there must be not only the assent of the parties to the marriage but also a continuous living together as husband and wife. For a general discussion of this subject see 8 MICH. L. REV. 325; 20 HARV. L. REV. 576 and 633.

BILLS AND NOTES—AMOUNT OF RECOVERY—ATTORNEYS' FEES.—A stipulation in a note for the payment of attorneys' fees is not against public policy or void, especially in view of the provisions of the Negotiable Instruments Act (Mills Ann. St. 1912, Sec. 5052) that the sum payable is a sum certain so as to render the instrument negotiable, although it is to be paid with costs of collection or an attorney's fee in case payment shall not be made at maturity, which impliedly recognizes such stipulations as valid. *Florence Oil & Refining Co.* v. *Hiawatha Oil, Gas & Refining Co.* (Colo. 1913) 135 Pac. 454.

The weight of authority seems to be with the holding of the principal case, i. e., that the stipulation in a note for the payment of attorneys' fees in case of nonpayment of the note at maturity is valid and enforceable, and this because no rule of law or public policy is invaded. *Dorsey* v. *Wolff,* 142 Ill. 589; *Jones* v. *Radatz,* 27 Minn. 240; *First National Bank* v. *Larson,* 60 Wis. 206; *Chase* v. *Whitmore,* 68 Cal. 545; *Bowie* v. *Hall,* 69 Md. 433; *Brahan* v. *First National Bank,* 72 Miss. 266; *Peyser* v. *Cole,* 11 Ore. 39, (But see *Commercial National Bank* v. *Davidson,* 18 Ore. 57); *Miner* v. *Paris Exchange Bank,* 53 Tex. 559. In other states such stipulations are by statute void, *Hartford Security Co.* v. *Eyer,* 36 Neb. 507; *National Bank of Commerce* v. *Fenney,* 9 S. D. 550; in others void as evasions of the usury laws, *Boozer* v. *Anderson,* 42 Ark. 167; *Meyer* v. *Hart,* 40 Mich. 517; *Tinsley* v. *Haskins,* 111 N. C. 340; as against public policy and as providing for penalty